

**STATEMENT
OF
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U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT**

June 16, 2011

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today to present the Department of the Interior's views on the implementation of the Native American Graves Protection and Repatriation Act. We appreciate your attention to the implementation of this important law.

The Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) provides a process for determining the rights of lineal descendants and Indian tribes and Native Hawaiian organizations to Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony in the possession or control of Federal agencies and museums and for human remains or items excavated or discovered on Federal or tribal lands after November 16, 1990. These items are basic to the humanity and definition of tribes. Resolution of rights to long-separated items through NAGPRA provides a means to restore long-denied rights and cultural heritage to tribes and to Native Hawaiian organizations.

The Department of the Interior and the several Federal agencies and museums that have NAGPRA obligations take their responsibilities seriously. As a result of NAGPRA, 10,000 Native American human remains, one million funerary objects, and thousands of sacred objects and objects of cultural patrimony are reported to have been united with tribes and Native Hawaiian organizations. The consultations between tribes and Federal agencies and museums, which occur as part of the NAGPRA process, have resulted in better relations between tribes and Federal agencies and have added to the body of knowledge on museum collections.

It must be recognized that, fundamentally, NAGPRA does not change ownership of items. Rather, it asks to whom these items should rightfully belong, against a history in which Native American human remains and cultural items were removed without permission from descendants, and in which it was assumed that possession conferred ownership. NAGPRA provides a process to sort out possession and authority for control, which allows those with priority rights to direct use and disposition. As a result, permits granted by Federal agencies for scientific study on the land confer access to allow accumulation of data, but do not transfer ownership to the permit holder.

ADMINISTRATION OF NAGPRA

The administration of the law follows two tracks: that of Federal agencies and museums with NAGPRA obligations, and that of the National NAGPRA Program, which administers some of the Secretary of the Interior's obligations for NAGPRA. The National NAGPRA Program, which is based in the National Park Service (NPS), has the responsibility for the following activities for the Secretary of the Interior:

- Publishing inventory and repatriation notices for museums and Federal agencies in the Federal Register, which indicate their decision to transfer control to tribes. These will shortly number 2,000 notices accounting for 42,000 Native American human remains, of which 10,000 have been repatriated to tribes and Native Hawaiian organizations, and over one million funerary and other cultural objects
- Creating and maintaining databases. The database of Culturally Unidentifiable Human Remains is now one of seven on the web maintained by the National NAGPRA Program to give access and transparency to all NAGPRA compliance information and assist in consultation and repatriation. Maps of tribal lands and other resources for consultation and repatriation are found on the National NAGPRA Program website at www.nps.gov/NAGPRA.
- Grant Making to assist museums, Indian tribes, and Native Hawaiian organizations in consulting on the determination of cultural affiliation and identification of cultural items, as well as for costs of repatriation when tribes bring ancestors and items home. From 1994-2010, 665 NAGPRA grants were awarded to museums and tribes, totaling nearly \$38 million. Repatriation grant requests have increased 300% in the past two years.
- Investigating civil penalty allegations and preparing assessments of penalties on museums that fail to comply with provisions of the Act. Since the promulgation of the regulations in 1997, 166 counts have been investigated and \$50,000 in penalties collected. Each museum found to not be in compliance has come into compliance by the end of the civil penalty process.
- Establishing and providing staff support to the Native American Graves Protection and Repatriation Review Committee, which resolves disputes and aids repatriation. Their report to Congress is a nationwide view of accomplishments and barriers.
- Providing technical assistance for prompt disposition when there are excavations of Native American human remains and cultural items on Federal and Indian lands. To date, Federal agencies have reported 111 dispositions, accounting for almost 1,000 human remains and 9,000 funerary objects.
- Drafting and promulgating implementing regulations. The rule on disposition of Culturally Unidentifiable Native American Human Remains became final in 2010; a rule on disposition of "unclaimed" human remains and funerary objects on Federal lands is under review at the Department of the Interior; and a complete review of the 1995 regulations is underway, to resolve issues and aid compliance.
- Providing technical assistance, through training, the web and reports for the Review Committee, as well as support for law enforcement investigations of illegal trafficking. Training is provided to upwards of 2,000 participants annually in in-person, webinar and video training. The National NAGPRA Program responds to thousands of inquiries annually.

In addition to administering the National NAGPRA Program, the National Park Service has responsibilities for NAGPRA in national parks. Since 2005, the two programs have been fully separate. At that time a consultative relationship between the Assistant Secretary of Fish and Wildlife and Parks and the Assistant Secretary of Indian Affairs was also established. The Office of the Solicitor, representing both agencies, consults on regulations and assists the National NAGPRA Program functions, including training.

Federal agency and museum compliance with the NAGPRA process begins with consultation with tribes to establish inventories of Native American human remains resulting in notices of inventory completion. This is a necessary first step to repatriation and works in conjunction with the distribution of collections summaries to tribes resulting in consultation and claims for cultural items resolved in notice of intent to repatriate notices. Dedication to the process is seen in the following:

- There have been 1,539 summaries and 459 statements that no NAGPRA collections summary was required submitted to the National NAGPRA Program from 770 museums and 286 Federal agency units. As a result, 531 notices of intent to repatriate have been published, accounting for 144,782 unassociated funerary objects, 4,321 sacred objects, 962 objects of cultural patrimony, 1,217 objects that are sacred and patrimony, and 292 undesignated items.
- There have been 1,119 inventories submitted to the National NAGPRA Program and 1,441 notices of inventory completion published, accounting for over 41,000 Native American human remains and 1 million funerary objects associated with them. All notices are on the web.
- Museums and Federal agencies prepare two inventories. One inventory lists those individuals for whom cultural affiliation can be determined. The list includes the decision of the museum or Federal agency. If information is lacking by which a determination can be made on a reasonable basis, the Native American individual is listed on the second list—the “inventory of culturally unidentifiable” (CUI) Native American human remains. A public access database of CUI was launched in fall 2005 by the National NAGPRA Program to assist in further consultation and identification. To date there are 125,671 individuals listed on the database and 939,385 funerary objects associated with those individuals. The number of CUI subsequently culturally identified to date is 5,544 and the number of CUI transferred by a disposition to a requesting tribe, without a cultural affiliation determination, is 3,960.

WITHDRAWAL OF NOTICES

In 2010, the Government Accountability Office (GAO) prepared a report on NAGPRA, which includes findings for the Bureau of Indian Affairs (BIA), the Bureau of Reclamation, the Bureau of Land Management, the Fish and Wildlife Service, the National Park Service, the Army Corps of Engineers, the U.S. Forest Service and the Tennessee Valley Authority. It reported on withdrawal notices, which are pre-publication drafts. Failure of a museum or Federal agency to publish a notice following completion of an inventory halts the repatriation process. Compliance requires publication of a notice and not mere submission to the National NAGPRA Program of a

draft document. In 2004, there were over 300 drafts, submitted between 1996 and 2004, for which the museum or Federal agency had not given the National NAGPRA Program permission to publish in the Federal Register.

In 2005, the National NAGPRA Program sent letters to the originators asking that they move forward on abandoned drafts, even if they withdrew them to complete consultation. The National NAGPRA Program tracks human remains listed in inventories, through resolution in a notice, and finally into transfer of control to tribes and Native Hawaiian Organizations. The National NAGPRA Program does not withdraw a notice, but facilitates the publication of notices. Less than 20 of the aging drafts await publication.

BARRIERS TO IMPLEMENTATION AND CURRENT ISSUES IN NAGPRA

- **Curation:** There are issues of access and use of Native American human remains and cultural items that remain in museum and Federal agency collections. Research institutions holding collections desire more time for study and tribes desire consultation on cultural affiliation prior to more study. Federal agencies are seeking to locate the extent of collections in non-Federal repositories in order to complete the NAGPRA compliance process.
- **Reporting Collections:** the National NAGPRA Program does not audit Federal agency or museum collections to determine that all Native American human remains and cultural items are listed on inventories or summaries. It is up to each Federal agency or museum to report its inventories. The GAO report requested that Federal agencies determine their need for time and resources to complete NAGPRA compliance and publish certain notices. Federal agencies hold one-fifth of NAGPRA items in collections, while museums hold four-fifths of all collections. Three-fourths of the total number of culturally affiliated individuals in Federal agency collections are represented in published notices of inventory completion.

NPS RESPONSE TO 2010 GAO NAGPRA REPORT

The 2010 GAO report on NAGPRA made five recommendations:

Recommendation 1:

Develop and provide to Congress a needs assessment listing specific actions, resources, and time needed to complete the inventories and summaries required by NAGPRA sections 5 and 6 for their historical collections.

Response:

Federal agencies are compiling their needs assessments and timelines, which are due to Congress by June 30, 2011. These responses will be submitted by the deadline.

Recommendation 2:

Develop and provide to Congress a timetable for the expeditious publication in the Federal Register of notices of inventory completion for all remaining Native American

human remains and associated funerary objects that have been culturally affiliated in inventories.

Response:

Federal agencies are compiling their timetables, which are due to Congress by June 30, 2011. These responses will be submitted by the deadline.

Recommendation 3:

Reassess whether Alaska Native Claims Settlement Act (ANCSA) corporations should be considered as eligible entities for the purposes of carrying out NAGPRA given the Solicitor's opinion and BIA policy concerning the status of ANCSA corporations that has been completed.

Response:

The Solicitor issued a memorandum on March 18, 2011 and the Department of the Interior will shortly publish an amendment to the NAGPRA regulations to delete the regulatory definition of "tribe" to be consistent with the statute, which does not include Alaska corporations as tribes.

Recommendations 4:

Strictly adhere to the nomination process prescribed in the Act and, working with the Department of the Interior's Office of the Solicitor, as appropriate, ensure that all Review Committee nominations are properly screened to confirm that the nominees and nominating entities meet statutory requirements.

Response:

The nomination process for NAGPRA Review Committee members was modified in 2008 and all selections from that time forward have followed the GAO recommendations.

Recommendation 5:

Request that the Department of the Interior request Federal agencies to report their human remains actually repatriated to tribes to the National NAGPRA Program on an annual basis and that the National NAGPRA Program report the information to the NAGPRA Review Committee for inclusion in their report to Congress.

Response:

The National NAGPRA Program began reporting the numbers to the Review Committee at their fall meeting in 2010 and in each report since. The numbers of human remains repatriated from Federal agency and museum collections to tribes and Native Hawaiian organizations will appear in the Review Committee Report to Congress for 2010, to be finalized on June 22, 2011, and in each annual report in the future.

Mr. Chairman, that concludes my statement. I will be pleased to answer any questions that you may have.